

BEFORE THE  
FEDERAL ELECTION COMMISSION

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REC'D  
FEDERAL ELECTION  
COMMISSION

CELA

American Democracy Legal Fund,

Complainant

MUR 6888

v.

Republican National Committee et al.,

Respondents

**RESPONSE OF FRIENDS OF PAT TOOMEY AND PAT TOOMEY TO  
COMPLAINT & SUPPLEMENTAL COMPLAINT(S) OF  
AMERICAN DEMOCRACY LEGAL FUND**

On October 14, 2014, the American Democracy Legal Fund ("ADLF" and/or "the Complainant"), filed a complaint against the Republican National Committee and other respondents in this matter, alleging that the respondents had violated the law governing Federal Election Campaigns, Title 52 United States Code, Subtitle III, Chapter 301, Subchapter I ("the Act"), specifically involving the law and the regulations of the Federal Election Commission ("FEC" or "the Commission") governing coordinated public communications. See Complaint, pp.1-2. A Supplemental Complaint was filed on August 28, 2015 against Friends of Pat Toomey, its Treasurer Lisa Lisker (collectively "Toomey Campaign") and Pat Toomey, naming them as additional respondents in the MUR (collectively, "Toomey Respondents").

For any complaint to be considered by the Commission, certain elements are legally required. It must:

- contain facts that clearly identify as a respondent each person or entity who is alleged to have committed a violation;
- contain a clear and concise recitation of the facts which describe a violation of statute or regulation by the person or entity named as a respondent; and
- be accompanied by any documentation supporting the facts alleged.<sup>1</sup>

<sup>1</sup> See 11. C.F.R. §111.4(d) and MUR 5878, SOR of McGahn, Hunter, and Petersen (available here: <http://eqs.fec.gov/eqsdocsMUR/13044342628.pdf>).

Statements which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainant's good faith belief in the truth of such statements. Id.

Furthermore, in MUR 4960, the Commission stated the following:

"The Commission may find 'reason to believe' *only if* a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA. Complaints not based upon personal knowledge *must* identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented." (emphasis added) <sup>2</sup>

By all accounts, the Complaint and Supplemental Complaints are wholly deficient and fail to meet the legally required standard.

The Supplement to the Complaint's sole evidentiary fact related to the Toomey Respondents are the publicly reported payments made and duly disclosed by the Toomey Campaign to i360, the Toomey Campaign's voter database company. See Exhibit III to Second Supplemental Complaint, "Operating Expenditures to i360" which reflects three (3) payments from Friends of Pat Toomey to i360 for data services.

There is no factual allegation whatsoever against Pat Toomey, individually.

The only thing the Complainant's spreadsheet demonstrates is that the Toomey Campaign entered into a good-faith contractual relationship with i360 for data services, for which the Toomey Campaign has paid market prices and which payments were fully disclosed to the FEC. Pursuant to the contract between i360 and the Toomey Campaign, i360 provided data services to a subscriber, the Toomey Campaign. Period. The Toomey Campaign received voter file data from i360 for use in its campaign, but sent no information to i360 that was then used by a third party for a coordinated public communication, nor is such a public communication even *alleged* to have occurred. There is not a single factual assertion regarding the supposedly 'non-public' information the Toomey Respondents allegedly provided to i360 which were then ostensibly used in some third party public communication.

There is no allegation that there even *were* any public communications by a third party regarding the Toomey Campaign that somehow related to i360. Campaigns routinely retain the services of vendors that also provide their services to other clients and customers. The mere fact that a company provides services to multiple campaigns is legally meaningless absent facts that are neither referenced nor included in the Complaint or the Supplemental Complaint regarding the Toomey Campaign.

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<sup>2</sup> See MUR 4960 (Hillary Rodham Clinton For U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1

It is clear that i360 is not a "common vendor" as defined under 11 C.F.R. 109.21(d)(4) because it does not (and did not) "create, produce, or distribute" communications. Instead, the Complaint makes the following utterly baseless claim on page 6 of the complaint:

"Reports filed with the Commission have revealed the identities of the Republican state party committees and federal candidate committees that are using i360's voter database, and *therefore, passing on crucial non-public voter information* to i360's other "independent" clients, entities that are legally prohibited from coordinating with the party and candidate committees."... Page 6, ADLF Supplemental Complaint

The Complaint makes this assertion without identifying the source of payment of a single public communication involving the Toomey Campaign and with not a single fact or any evidence to support this bald conclusion.

There is no factual assertion whatsoever of how the Toomey Campaign supposedly provided 'proprietary, non-public information' to / through i360 which then resulted in a public communication regarding the Toomey Campaign, or which meets any of the prongs of the FEC's multi-prong test for ascertaining whether a coordinated public communication has occurred.

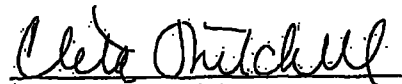
There are no facts of a public communication paid for by a third party, which communication would necessarily be required to meet the content and conduct standards of the FEC's regulations governing 'coordinated public communications'. See 11 C.F.R. §100.21. Indeed, the only "evidence" provided to the Commission about the Toomey Campaign / Toomey Respondents is a spreadsheet reflecting payments made by the Toomey Campaign to i360 for the Toomey Campaign's database. There is no evidence of a public communication paid for by a third party about the Toomey Respondents, which is the threshold requirement for analyzing 'coordinated public communications'. The Complaint fails to allege facts or a legal theory that would actually constitute a violation of the law.

In summary, the Supplemental Complaint utterly fails to meet any of the requirements necessary for the Commission to pursue further action against the Toomey Respondents and the Commission must dismiss the complaint against them.

THEREFORE, Pat Toomey and Friends of Pat Toomey respectfully request that they be dismissed from the Supplemental Complaint and that the Commission award them attorneys' fees incurred in responding to ADLF's frivolous and wholly baseless complaint.

Respectfully submitted this 1<sup>st</sup> day of November 2015.

BY:



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